

## **DISCLAIMER**

**THIS POLICY MANUAL IS INTENDED TO BE A GUIDE AND NOTHING CONTAINED IN THIS MANUAL, OR ANY WRITTEN OR ORAL STATEMENT CONTRADICTING, MODIFYING, INTERPRETING, EXPLAINING OR CLARIFYING ANY PROVISION OF THE MANUAL, IS INTENDED TO CREATE, OR SHALL CREATE, ANY EXPRESS OR IMPLIED CONTRACTUAL OBLIGATIONS THAT ARE BINDING UPON EITHER THE EMPLOYER OR YOU. THIS MANUAL IS INTENDED TO PROVIDE YOU WITH INFORMATION ABOUT STATE POLICIES AND PRACTICES THAT ARE CURRENTLY IN FORCE. THESE POLICIES AND PRACTICES ARE SUBJECT TO CHANGE. INFORMATION CONTAINED IN THIS MANUAL IS NOT MEANT AS, NOR SHOULD IT TAKE THE PLACE OF INDIVIDUAL LEGAL ADVICE. YOU SHOULD CONSULT AN ATTORNEY OF YOUR CHOICE FOR LEGAL ADVICE REGARDING YOUR PARTICULAR SITUATION.**

# **STATE OF ALABAMA FMLA POLICY**

## **ELIGIBILITY**

For employees to be eligible for Family and Medical Leave Act of 1993 (FMLA) leave, an employee must:

1. Be employed at a worksite where 50 or more employees are employed by the Department within 75 miles of that worksite, and
2. Have been employed by the Department for at least one year as of the date leave is to start, and
3. Have worked for the Department at least 1,250 hours in the immediate past 12 months.

## **REASONS**

Employees who are eligible under the FMLA may take leave for up to 12 workweeks during a twelve-month period for any one of the following reasons:

1. The birth of the employee's child;
2. The placement of a child for adoption or foster care with the employee;
3. To care for a member of their immediate family; or
4. A serious health condition of the employee.

After meeting the eligibility requirements and falling under one of the reasons outlined above, an employee's reason for FMLA leave must fall into one of six "serious health conditions."

## **POLICY**

An employee who meets the above requirements is eligible for 12 workweeks of FMLA leave during a year, meaning 12 workweeks per 12-month period. The 12-month period is not a calendar year but is a "rolling year," which is measured 12 months backwards from the date an employee schedules and/or uses any FMLA leave. Each time an employee takes FMLA leave, the remaining leave entitlement will be the balance of the 12 weeks which has not been used during the immediately preceding 12 months. FMLA leave can be applied retroactively.

An eligible employee may take FMLA leave in three manners: a single condition, intermittent leave, and/or a reduced work schedule. Any FMLA leave taken for a single condition is to be taken all at one time. Intermittent leave and reduced work schedule are used only if medically necessary and

with proper Medical Certification Form. Any intermittent leave schedule must be approved by the appointing authority.

Employees seeking to take FMLA leave because of the birth and immediate care of a child or the adoption or placement of a child in foster care shall not take leave intermittently or on reduced leave schedule unless the employee and employer agree otherwise. FMLA leave taken for the serious health condition of the employee or the employee's immediate family member may be taken intermittently or on a reduced leave schedule when medically necessary.

If an employee has been on FMLA leave and chooses to come back to work but is unable to perform the essential functions of the job, the employee may be put on "light duty." "Light duty" must be implemented in accordance with departmental guidelines, approved by the appointing authority, and agreed upon by the employee. Even though the employee is at work, light duty work days are classified as FMLA days. An employer or supervisor cannot make an employee return to work under light duty.

Departments with employees seeking FMLA leave for their own serious health conditions or for the serious health conditions of immediate family members must require employees to provide medical certification of the reasons/conditions for which FMLA is requested. Employees are required to submit the Medical Certification Form completed by the attending health care provider. The certification form should be given or mailed to the employee seeking leave along with a letter explaining the process for requesting FMLA leave. The letter directs the employee to give the form to the health care provider attending the particular condition. The letter should also state that the form is to be returned to the employer within 15 calendar days after sending the request to the employer.

Failure to provide the certification in a manner required by departmental policy may result in denial of and/or delay in taking leave, as well as discipline, up to and including termination. Remember that disciplinary action is never taken because the employee is asking or is taking FMLA leave, and the employee should be made aware of this distinction. If the failure to return the form is due to a delay of the health care provider, the employer should tell the employee to pursue the completion of the form. After reasonable attempts to request form from the employee, leave may be denied.

After reviewing the submitted form, the department, at its discretion and expense, may require a second medical opinion if the authenticity of the information provided on the Medical Certification Form is in question, or if the diagnosis is too vague or incomplete to conclude whether the situation amounts to a "serious health condition." The doctor providing the second medical opinion cannot be one who is regularly employed or utilized by the state or by the Department. If the first and second opinions differ, the Department, at its own expense again, may require the binding opinion of a third health care provider approved jointly by the employee and the Department.

An appointing authority may require an employee on FMLA leave to report periodically to the supervisor or employer that status of his/her condition and/or intention to return to work. This recertification must occur at reasonable intervals, generally no less than 30 days in length. The employee should be informed of this requirement at the time that he/she receives notification of approval of FMLA leave. An entirely new Medical Certification Form may be requested, along with second and third medical opinions, once an employee has his/her first absence (or makes a first request for leave) in a new FMLA year. The employer may request new certification, even if it recently requested and obtained a recertification in the prior leave year.

As a condition of reinstatement, the department may also require certification from a health care provider that the employee is able or fit to resume productive work status of the position's essential job functions. This request for fitness for return to work must be requested at the beginning of the FMLA leave period and indicated on the Employer Response to Employee Form.

This request may also include an additional Medication Certification Form if the employee indicates that future appointments, treatments, or absences are necessary in connection with the condition for which FMLA leave was taken.

Spouses who are both employed by the same Department are entitled to a combined maximum of 12 weeks of FMLA leave (rather than 12 weeks each) for the birth or placement of a child for adoption or foster care. FMLA Leave is only during the first year following the birth, adoption, or as a foster parent. An employee does not have the right to take intermittent leave or work a reduced work schedule in connection with the birth or adoption of a child. However, if an employee's child or spouse is seriously ill, both employees spouses are each entitled to 12 weeks of leave. This leave must be supported by a Medical Certification Form for the qualifying illness. Leave for birth or placement of a child for adoption or foster care, may include time prior to the actual birth or placement such as social work visits, attorney meetings, prenatal appointments, morning sickness, etc. Again, an employee's FMLA entitlement to leave for the birth or placement of a child for adoption or foster care shall expire at the end of the 12 month period beginning on the date of such birth or placement.

During FMLA leave, the Department will maintain the employee's individual group insurance benefits at the same level and under the same conditions as if the employee had been working. Dependent insurance coverage must be paid by the employee. The employee's position or a similar position with equal benefits and pay must be maintained. If an employee fails to return to work at the conclusion of the approved leave, he/she will be required to reimburse the Department for the employer's portion of the insurance premium paid on their behalf during the leave. If an employee returns to work for at least 30 calendar days after the FMLA leave expires, the employee is considered to have returned to work and will not be liable for insurance repayments. Additionally, an individual who retires immediately (or within the first 30 days) after the expiration of FMLA leave is not required to pay back any health insurance premiums. Lastly, insurance premium reimbursement is not required if the failure to return to work is due to the continuation, recurrence, or onset of another serious health condition of the employee or qualifying family member that would otherwise entitle the employee to FMLA leave.

When it is foreseeable, an employee must request FMLA-qualifying leave at least 30 days in advance of the need for leave. Examples of foreseeable leave might be a birth of a child, placement of a child for adoption or foster care, or planned medical treatment or a serious health condition of the employee or of a family member. Necessary information for the request must consist of:

1. The reasons for the requested leave;
2. The anticipated start of the leave; and
3. The anticipated duration of the leave.

If 30 days notice is not practicable, such as a medical emergency, notice must be given as soon as practicable (which ordinarily means at least verbal notification to the employee's department within 1 or 2 business days of when the need for leave becomes known to the employee). Reasonable efforts must also be made to schedule foreseeable leave so as not to unduly disrupt work operations. Failure to give the required notice may delay the taking of FMLA leave for at least 30 days after the

date the employee provides notice to the employer of the need for FMLA leave unless the need is deemed medically necessary by\_\_\_\_\_.

Upon timely return from an FMLA qualifying leave and with proper certification, an eligible employee who has not been designated a "key" employee by the Agency, will be restored to his/her last position or an equivalent position with equal pay, benefits, and other conditions and terms of employment. Employees involved in disciplinary actions from management will still be under those actions after returning to work from an FMLA leave of absence.

FMLA provides that it is unlawful to interfere with, restrain, or deny the exercise of any right provided under the Family and Medical Leave Act (FMLA). It is not the intent of the State to discharge or discriminate against any person for enforcing FMLA or opposing practices made unlawful by FMLA, nor is it the State's intent to discharge or discriminate against any person because of involvement in any proceeding under or related to FMLA. A notice approved by the Secretary of Labor explaining employees' rights and responsibilities under FMLA will be prominently posted in a conspicuous place at the work site. FMLA's enforcement procedures parallel those of the federal Fair Labor Standards Act. The FMLA will be enforced by the U.S. Department of Labor's Wage and Hour Division. If an eligible employee has a complaint regarding an FMLA violation, he or she should discuss it with the supervisor, following the chain of command leading to the Department's Personnel Office. After pursuing this course of action, if the employee is not satisfied with the resolution of the problem, the employee may contact the State of Alabama Personnel Department.

**Note:** Following this procedure does not toll the running of the statute of limitations. As a matter of recourse, an eligible employee may file a charge with the Secretary of Labor, who is authorized to investigate and attempt to resolve complaints of violations, as well as bring an action against an employer in any federal or state court of law. Alternatively, an employee can file an action for injunctive relief against the employer.

**STATE OF ALABAMA  
MEDICAL CERTIFICATION FORM  
FAMILY AND MEDICAL LEAVE ACT OF 1993**

The Medical Certification Form is to be completed by the health care provider of the employee or the immediate family member for which the employee is taking leave. Please print legibly when answering all questions.

1. Employee's Name: \_\_\_\_\_
2. Patient's Name (if family member): \_\_\_\_\_
3. Please refer to the attached enclosure for a description of a "Serious Health Condition" under the Family and Medical Leave Act. Does the patient's condition qualify under any of the categories described? \_\_\_\_\_ Yes \_\_\_\_\_ No

If so, please check the applicable category.

(1)\_\_\_\_(2)\_\_\_\_(3)\_\_\_\_(4)\_\_\_\_(5)\_\_\_\_(6)\_\_\_\_

4. Document the medical facts that support the conclusion identified in the preceding paragraph, including a brief statement as to how the medical facts meet the criteria of one of the categories as indicated above. Information should be complete so to determine as to whether leave qualifies as FMLA leave.

**Please complete the relevant section (I or II).**

**I. EMPLOYEE'S OWN ILLNESS /YES \_\_\_\_\_ NO \_\_\_\_\_**

5. State the approximate date the condition began, and whether there is a need for the patient's future incapacity. "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school/training or perform other regular daily activities due to the serious health condition, treatment and/or recovery there from.
6. Will it be necessary for the employee to take leave as a single one-time event, intermittently, or to work on a reduced work schedule as a result of the condition (including for treatment described in above)? Please designate your response on the immediately succeeding page.

**If leave will be for a single one-time event**, give the probable duration of the single absence of the particular event.

**If leave will be intermittent or as a reduced work schedule**, give the probable duration of the absences of the particular condition.

7. State whether the patient is presently incapacitated due to the identified serious health condition(s). Yes \_\_\_\_ No \_\_\_\_

If so, what is the likely duration and frequency of the episodes of incapacity?

If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments and the interval between such treatments (actual or estimated). Please include any necessary recovery time.

Will any of these treatments be provided by another provider of health services (e.g., physical therapist)? Yes \_\_\_\_ No \_\_\_\_

If yes, please state the nature of the treatments.

Will a regimen of continuing treatment by the patient be required under your supervision? Yes \_\_\_\_ No \_\_\_\_

If yes, provide a general description of such regimen (e.g., prescription drugs, special equipment, therapy/rehabilitation).

Will the continued regimen be by another health care provider? Yes \_\_\_\_ No \_\_\_\_

If yes, please explain.

8. If the employee has a permanent/long-term condition requiring supervision or requires hospital/inpatient care, as defined under FMLA (see enclosure), state how long the condition will persist.

What, if any, recovery will the employee need outside supervision or inpatient care? Please state the duration of such recovery.

9. Is the employee unable to perform work of any kind? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please state what activities are prohibited due to the condition.

If the employee is able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (please see the attached essential job functions of the employee)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please list the essential functions the employee is unable to perform.

## **II. IMMEDIATE FAMILY MEMBER'S ILLNESS /YES \_\_\_\_\_ NO \_\_\_\_\_**

10. If leave is required to care for a family member of the employee with a serious health condition, what type of assistance (for basic medical/personal needs, safety, emotional support or for transportation) does the person need?

11. Will it be necessary for the employee to take leave as a single one-time event, intermittently, or to work on a reduced work schedule as a result of the condition (including for treatment described in above)? Please designate your response in the appropriate category.

**If leave will be for a single one time event**, give the probable duration of the single absence of the particular event.

**If leave will be intermittent or as a reduced work schedule**, give the probable duration and frequency of the absences for the immediate family with the particular condition.



**The following is to be completed by the employee needing family leave to care for a family member:**

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or as a reduced work schedule:

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(Employee Signature)

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(Date)

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**The following is to be completed for purposes of FMLA by the health care provider of the 1) employee or the 2) immediate family member regarding absence(s) from work:**

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(Printed Name of Health Care Provider)

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(Date)

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(Signature of Health Care Provider)

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(Type of Practice)

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(Address)

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(Telephone Number)

**STATE OF ALABAMA**  
**ENCLOSURE FOR MEDICAL CERTIFICATION FORM OF HEALTH CARE PROVIDER**  
**FAMILY AND MEDICAL LEAVE ACT OF 1993**

**A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:**

- 1. Hospital Care** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
- 2. Absence Plus Treatment** A period of incapacity of more than three consecutive calendar days including any subsequent treatment or period of incapacity relating to the same condition that also involves:
  1. Two or more treatments by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders and/or on referral. (Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition, but treatment does not include routine exams.); or
  2. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. A regimen of continuing treatment such as a prescription or therapist services. A regimen of treatment does not include the taking of over-the-counter medications or non-supervised common home actions.
- 3. Pregnancy** Any period of incapacity due to pregnancy, or for prenatal care.
- 4. Chronic Conditions Requiring Treatments** A chronic condition which:
  1. Requires periodic visits for treatment by a health care provider, nurse, or physician's assistant under direct supervision of a health care provider;
  2. Continues over an extended period of time (including recurring episodes); and
  3. May cause episodic rather than a continuing period of incapacity, such as asthma, epilepsy, or diabetes.
- 5. Permanent/Long-term Conditions Requiring Supervision** A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider. Examples include Alzheimer's Disease, a severe stroke, or the terminal stages of a disease.
- 6. Multiple Treatments (Non-Chronic Conditions)** Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, **or** for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (e.g., chemotherapy, radiation), severe arthritis (e.g., physical therapy), or kidney disease (e.g., dialysis).